In the Supreme Court of the United States

OCTOBER TERM, 1942

No. 460

NATIONAL LABOR RELATIONS BOARD
Petitioner

vs.

SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY

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SOUTHERN ASSOCIATION OF BELL TELEPHONE EMPLOYEES

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In this brief Southern Association of Bell Telephone Employees will be referred to as the "Association". Southern Bell Telephone and Telegraph Company will be referred to as the "Company".

The real parties most vitally interested in the ultimate result of this case are the approximately 20,000 non-supervisory employees of the Company located in the nine states where the Company operates. These employees claim, and are earnestly seeking, the right to be represented in their relations with the Company by the organization of their own choosing. They have repeatedly expressed and demonstrated their fixed desire and purpose not to be compelled to join, or affiliate with, one of the great national labor organizations[1]. There are approximately 20,000 employees of the Company in the nine states where the Company operates who are eligible as members of a labor organization (R. 221)[2].

Of these, approximately 17,500 are members of the Association (R. 257). These employees have, since immediately after the passage of the Act, repeatedly expressed their choice of the Association as their bargaining agency. They intervened in this case, and are here now, for the purpose of seeking in every possible legitimate way to be accorded the right to be so represented. If they are to be denied this right it must, in the final analysis, be either on the theory (1) that they were not suf-

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[1] This applies to the American Federation of Labor and Congress of Industrial Organization. The Association is now affiliated with the National Federation of Telephone Workers, which is a recognized labor organization composed, in the main, of employees of telephone and communication companies. This affiliation has been completed since the decision of the Circuit Court of Appeals in this case was rendered.

[2] The Company operates in the States of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Tennessee, and Kentucky.

ficiently intelligent to understand their rights after they were informed of them; or (2) that they were always under such coercion as not to be able to give free expression to their wishes. The evidence, when fairly considered, supports neither theory. It affirmatively refutes both. The employees and their Association are not concerned with the question what, if any, remedial measures may be meted out to the Company for any infraction by it of the terms of the Act so long as those measures do not go to the extent of depriving the employees of their rights to self-organization to be represented by the agency of their own choosing. The order of the Board, if allowed to stand, would, we submit, result in the complete denial to the employees of the very rights guaranteed them by the Act. It would amount to visiting the sins or mistakes of the employer upon the innocent employees. The only practical result of this would be to compel these employees to undergo the hardship and expense of a new campaign of organization, and that at a time when their services and all of their time are sorely needed to maintain the vital services being rendered by them[3].

It has been demonstrated, and we can confidently assert, that these employees will not be organized by, or become affiliated with, the union which is the sole instigator of this case. They will,

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[3] The difficulties and expense and hardships that would be incident to a campaign of organization in this case would be much greater than would be involved in the ordinary case. This is true because of the fact that the employees are scattered over such a large territory, and it is especially true at this time because of the difficulties incident to travelling.

if it is possible for them to do so, have their own organization. This Court has said that employees are entitled to this right.[4]

Certain cases before the War Labor Board (which proceedings are within the judicial cognizance of the Court) illustrate the development of labor unions in the telephone field and their independence. They are:

In the matter of Ohio Bell Telephone Co., and Ohio Federation of Telephone Workers, Incorporated, Case No. 337, decided November, 1942.

In the matter of Diamond State Telephone Co. and United Telephone Plant Workers of Delaware, Case No. 366, decided December 28, 1942, reported in 11 *Labor Relations Reporter* 563.

In the matter of Western Electric Co. and Western Electric Employees Association, Incorporated, Case No. 89, decided April 16, 1942.

In the latter case a paragraph in the report of the Mediation Panel, afterwards adopted by the Board, follows:

> "The Western Electric Employees Association, Kearny Area, is an independent union. It is affiliated both with the National Committee of Communication Equipment Workers, which

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[4] "An 'inside' union, as well as an 'outside' union, may be the produce of the right of the employees to self organization and to collective bargaining 'through representatives of their own choosing', guaranteed by §7 of the Act. * * "

National Labor Relations Board v. Link-Belt Co., 311 *U. S.* 584, 587.

represents the six independent unions in the Western Electric group, and the National Federation of Telephone Workers, to which are attached a majority of the independent organizations in the Bell System."

In the Ohio Bell Telephone Company case the report of the Mediation Panel, afterwards adopted by the Board, contains the following statement:

"The Ohio Federation of Telephone Workers Incorporated, is one of thirty-eight organizations forming the National Federation of Telephone Workers."

These cases show a development in the Telephone Labor field similar to that which took place many years ago in the Railway labor field. The unions of employees in different areas have now become nationally affiliated and constitute now a national organization of telephone workers. The vigor of their contest with management, as reflected in these Labor Board cases, illustrates their complete independence and shows that any claim that they are company dominated is wholly imaginary.

This case is unusual, and perhaps unique, in that the charges and complaint did not originate or grow out of any dissatisfaction on the part of the employees, or out of any friction or dispute between the employees and the Company. It originated with the filing of a complaint by the professional labor organizer, and obviously because of his desire to organize the employees into the union represented by him. The acts complained of, and which form the basis of the complaint, had occurred some three to five years prior to the filing

of the complaint (see note 1 to the decision of the Circuit Court of Appeals, R. 337). While it is not questioned that the Board and the courts may take into consideration, along with all of other facts and circumstances of a case, evidence of past acts of employer domination or support in determining whether a given organization is one which should be recognized as a legitimate bargaining agency, it is submitted that where the undisputed and uncontradicted evidence shows that such domination or support, if it ever existed, was so minor as to be almost negligible and where, as in this case, it had entirely ceased for some three years before the filing of the complaint, the purposes of the Act are not fulfilled by withdrawing from the employees the right to be represented by their chosen organization where the evidence, as in this case, demonstrates that such choice has been expressed or reiterated long after all unfair labor acts of the employer have ceased.

There is not in this case, as there was in those cases decided by this Court upholding the Board in disestablishing so-called "inside" or Company unions, such as, for example, *National Labor Relations Board vs. Link-Belt Co., supra.*, and similar cases, any evidence of hostility of the Company toward outside labor organizations, or favoritism, or partiality toward an inside union, or acts of intimidation or coercion, or the employment of labor spies. On the contrary, the evidence, without conflict or contradiction, demonstrates that the Company has never been guilty of any such conduct, and that it was never guilty of any act or conduct justifying a claim that it sought to discrimi-

nate against any union or organization, inside or outside. This is true, with the sole possible exception of the acts alleged to have been committed by minor officials and supervisory employees at Shreveport, Louisiana, just prior to the filing of the charges out of which the complaint in this case grew, and the evidence is without dispute that the Company not only did not authorize such acts and conduct, but promptly repudiated the same.

History of the Association

The original Association bearing the same name as the present one was organized in 1919. It was supported financially by the Company. It had no regular established roll of membership, and there was no uniform practice of even requiring any application to be made for membership therein. There were no dues required of, or collected from, the members. When it became apparent that the Labor Relations Act would be adopted, and before it was adopted, some of the employees who were interested in the then Association, with the consent and approval of the Company, undertook to raise funds by voluntary contributions from the employees of the Company, whether members of the then Association or not, in order to be in a position to reorganize the Association when the Act should become effective.

The Company permitted certain of its employees, at their request, to solicit such contributions while working on Company time, and in some instances, while using Company automobiles. This was all done before the Act became effective. It was not then illegal for the Company to do this.

There was raised by such voluntary contributions approximately $5,000. The contributions were fifty cents each from such of the employees who contributed. After the Act became effective, and after the present, or reorganized, Association came into existence under the new constitution effective February 1, 1936, every one of these contributions was refunded to the employees who had made them, the refund being made by the Association from funds raised from dues paid by the members of the reorganized Association (R. 135; 184). The obvious reason why the Association refunded these contributions was to remove any basis for the claim that the Association as reorganized was being financed, in whole or in part, by the Company, or from funds to which the Company had indirectly contributed. This, in itself, is, we submit, evidence of the purpose and determination of the employees to exercise their rights under the Act and to be free from Company domination or support.

The old Association which had existed prior to the passage of the Act had as its President one Mr. Askew, who occupied the position of Cashier of the Georgia Division of the Company. It was his duty to distribute salary and pay checks to the employees. He had no authority to hire or fire anyone, and had no supervisory authority over any employee. Askew believed that the old Association under its then structure and set-up should be retained, and that the only change that should be made was to provide for the collection of dues with which to finance the operations of the Association. Other employees, who took the initiative

in the formation and adoption of an entirely new constitution, did not agree with Askew's views. They were insistent that an entirely new constitution should be adopted (R. 136; 139; 182). As will be pointed out in more detail hereafter, Askew's views were not accepted, and as the result of his insistence on his views being carried out, he was eliminated as President of the old Association, and he was not allowed either to appoint the committee of employees who were to formulate the new constitution (R. 185), or to participate in any way, or even be present, while this committee of employees were formulating and compiling the new constitution (R. 182). In this connection attention is directed to the finding by the Trial Examiner (R. 54), and adopted by the Board (R. 104), to the effect that Askew was largely responsible for initiating the movement for a "new Association". This finding overlooked, or ignored, the undisputed facts to which we have called attention just above.

Within a few days after the act became effective, J. E. Warren, then Vice President of the Company in charge of Operations (the President being incapacitated by illness), called a meeting of department heads of the Company for the purpose of explaining to them the terms of the Labor Relations Act, and instructing them as to the policies of the Company with respect thereto. The meeting was held on July 16, 1935, and was attended by the heads of the departments throughout the territory. At that meeting Warren read the provisions of the Act and explained the meaning thereof, and stated that it would be the policy of the Company to faith-

fully comply with the letter and spirit of the Act. He instructed these department heads to communicate this information and these instructions to their subordinates and, through them, to all employees of the Company. It was stipulated on the hearing before the Trial Examiner that these instructions from Warren were complied with (R. 245-6). Shortly after this meeting, in August 1935, a committee, who had been selected by the employees for that purpose, met in Atlanta for the purpose of formulating a new constitution for the Association and plans for submitting such new constitution to the employees. The employees, including the members of the committee, had been informed of the occurrences at the meeting held by Warren, and they had been furnished copies of the Act (R. 179; 180). Without the assistance of an attorney, the members of this committee undertook to, and did, compile and prepare an entirely new constitution (R. 163; 256). It is true that the new constitution embodied some features of the old constitution. The method adopted by these laymen was to take excerpts from the old constitution and from constitutions of other similar organizations, and put them together so as to compile an entire constitution from beginning to end (R. 181-182). They did not undertake to, and did not propose amendments to an existing constitution (R. 179; 188; 255).

It was not claimed, and there was no evidence to the effect, that any officer or supervisory employee of the Company had any part whatever in the preparation of the new constitution; there is positive evidence to the contrary (R. 183).

After the new constitution had been prepared by this committee of employees, it was then submitted to a larger committee composed of those who had been members of "the General Assembly" of the old organization, being employees from all the different sections and divisions covered by the Company's operations. These members of the "General Assembly" were each furnished a copy of the proposed new constitution, and it was gone over, section by section, and discussed and debated (R. 255-6; 281). Following this, the proposed new constitution was submitted through the old locals of the old organization to the employees throughout the territory. It was to become effective February 1, 1936. It was adopted, or ratified, by the employees through these locals, and did become effective February 1, 1936. There was also submitted with the proposed new constitution a tentative proposed agreement between the Association and the Company, which was to become effective February 1, 1936, simultaneously with the effective date of the new constitution. The proposed new constitution and this agreement were submitted together, under one cover, the cover having upon it the words: "Constitution and Joint Agreement between Management and Employees Association as to Procedure Amended by Special Session of General Assembly, September 1935, and effective February 1, 1936" (R. 181).

The committee of employees, realizing that funds would be required with which to defray the expenses in the interim before the effective date of the new constitution, proposed and submitted to

the employees, through the old locals, a resolution (known as "Resolution No. 1"; Association Exhibit 7), reciting, among other things, "Whereas the passage of the Wagner Labor Relations Bill prohibits Southern Bell Telephone and Telegraph Company from further contributing to the financial support of the Association to any degree, and the Association is threatened with impairment, an emergency is declared to exist." The resolution provided that "pending the adoption of the revised constitution, there be authorized an assessment of dues of ten cents weekly for each male member, and five cents weekly for each female member." The resolution also provided that the President of the Association be authorized "to negotiate with the Management for the collection of the above dues by means of salary deductions." It also provided for a temporary committee to develop rules and regulations for the handling of the funds in the interim until the new constitution could be adopted (R. 334; 335).

It is abundantly clear from the record that the employees, in good faith and without any participation or influence on the part of the Company, undertook to, and did, formulate and adopt an entirely new constitution. It is true that this constitution embodied many provisions that had been contained in the old constitution, but there were many new features, perhaps the most important of which was the one providing for the General Executive Board, and giving it very broad powers regarding matters of vital concern to the employees. The representatives of the employees who met and formulated the new constitution were

fully cognizant of the fact that the employees had the right to self-organization, and that the Company had no right to support, dominate, or interfere with any organization which the employees might choose to adopt. Their conduct, as shown by the evidence, demonstrates that they so understood, and they were determined to exercise these rights and privileges. The minutes of that meeting show clearly that they so understood (Board's Exhibit 8; R. 275; 283). It is true that the framework of the new constitution was somewhat crude in many respects, but it should be remembered that these people were not lawyers, and were not skilled in drawing legal documents. The substance of what they embodied in the constitution was what they wanted and was sufficient to accomplish the desired results. The important thing is that what they actually did was, in effect, to abandon the old organization and set up a temporary organization for the limited purpose of handling the finances until the new organization could come into existence, and that the new organization did come into existence by the adoption of an entirely new constitution.

The Association has functioned as the bargaining representative of the employees from February 1, 1936 until the present time, with the exception of a period in the early part of 1941, when it voluntarily relinquished this right pending a referendum. This will be referred to in more detail hereafter. During the period February 1, 1936, to date of the hearing before the Trial Examiner, the Association, as the bargaining agency of the employees, accomplished results satisfactory

to the employees (R. 186; 187; 222; 225; 227; 315; 316). There is no contention that the representation of the employees by the Association was not effective, or satisfactory. Indeed, the whole theory of the Board's case was, and is, that because of the fact that the present Association was the outgrowth of the old one, and because it bears the same name as the old one, it cannot be regarded as a legitimate bargaining agency for the employees.

The 1941 Referendum

The first intimation that anyone connected with the Association had to the effect that there was any doubt or question as to its being a legitimate organization, entitled to act as the bargaining representative of the employees, was in the latter part of 1940, when an organizer of the IBEW undertook to organize a local for that union at Shreveport, Louisiana. Being unsuccessful, he filed charges with the Regional Director of the Board at New Orleans, Louisiana (R. 17; 18). Having learned of these charges, the General Executive Board of the Association, on February 10, 1941, notified the Company that pending the vote of the membership the Association would cease to act as the bargaining representative of the employees (R. 316). The Company, through its President, acknowledged receipt of this notice on February 11, 1941, stating, "It is noted that, pending a canvass of your members, you will not undertake to represent the employees of this Company as their collective bargaining agent." Following this, the Association, through its locals, notified the employees generally of this action, and that pending the re-

sult of the balloting the Association would not undertake to act as the bargaining agency of the employees. Arrangements were made with a firm of certified public accountants in Atlanta, to receive and to compile the ballots, and to certify the results. Ballots were prepared and sent to all members of the Association. The form of ballot was as follows (R. 324):

"NOTICE

"THIS BALLOT MUST BEAR THE SIGNATURE OF THE MEMBER VOTING AND SHOULD BE SEALED AND RETURNED IMMEDIATELY

"Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Answer: Yes ( ) No ( ).

"Do you desire to continue your membership in Southern Association of Bell Telephone Employees? Answer: Yes ( ) No ( ).

....

(Signature) (Date)

"(In accordance with association practices do not distribute during working hours.)"

The result of the ballot, as certified by the firm of certified public accountants (R. 332-333), was:

"15,356 members answered 'Yes' to these questions:

"Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Do you desire to continue your membership in Southern Associa-

tion of Bell Telephone Employees?

"95 members answered 'No' to this question: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? and answered 'Yes' to this question: Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

"170 members failed to answer this question: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? and answered 'Yes' to this question: Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

"165 members answered 'Yes' to both of these questions, but failed to sign their ballots: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

"16 members answered 'No' to both of these questions: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

"23 members answered 'Yes' to this question: Do you desire Southern Association of Bell Telephone Employees to represent you in collective bargaining with Southern Bell Telephone & Telegraph Co.? but failed to answer

this question: Do you desire to continue your membership in Southern Association of Bell Telephone Employees?

"64 made various remarks or failed to properly answer the questions asked by the ballots.

"80 ballots mailed out were returned undelivered."

In the meantime, after the Association had, on February 10, 1941, notified the Company of the intention of the Association to take the referendum, the Company issued, and caused to be posted throughout the territory at 2,173 places, a notice as follows (R. 318; 319):

"SOUTHERN BELL TELEPHONE AND TELEGRAPH COMPANY, INCORPORATED

HURT BUILDING

Atlanta, Georgia, February 11, 1941

"TO ALL GENERAL OFFICERS, STATE HEADS, DISTRICT HEADS, GENERAL AND STATE STAFF HEADS:

"There is herewith enclosed to each of you copy of letter received by the Company from the Southern Association of Bell Telephone Employees, of date February 10, 1941, and copy of the reply of the Company of date February 11, 1941.

"From this correspondence it appears that the Southern Association of Bell Telephone Employees is to canvass its members by ballot, and that another labor organization is undertaking to organize certain of the employees of this Company; also you will note that, pending the canvass of its members, such Association will not undertake to act as the col-

lective bargaining agent of the employees of this Company.

"You are therefore advised as follows:

"1. You are directed and you should immediately instruct all supervisory personnel under your jurisdiction in no wise to interfere with any activities of the employees or of any labor organization or union, or in any way advise with such employees with reference to any labor organization activities, or influence any employee to join or not to join a labor organization, or as to the kind or type of labor organization which the employee or employees should or should not join, assist or become affiliated with.

"All employees have an unqualified right, under the National Labor Relations Act, to exercise their free and uninfluenced choice in such matters.

"2. The enclosed notices, directed to the employees of this Company, are to be posted in every Company building, whether owned or leased, on all bulletin boards therein where available, and where not available, in a prominent place therein.

"3. The individual posting these notices will sign at the place provided thereon, stating his or her title and noting the date and hour of posting.

"4. The individual posting these notices will, in writing, advise his or her immediate supervisor of his or her action in so doing.

"Yours very truly,

"(Sd.) J. E. Warren,
President."

After the result of the balloting had been certified by the firm of certified public accountants, the Association demanded of the Company that the Company recognize the Association as the bargaining agency of the employees, and the Company, on March 3, 1941, in reply to that demand, called upon the Association to furnish certain information, including a copy of the ballot, copies of any letters that had been sent to the employees of the Company relating to the ballot, and an affidavit of a responsible member of the firm of certified public accounts, showing the manner in which the ballots were received, tabulated, and counted, and the results. This information was furnished and thereafter the Company recognized the Association as the bargaining representative of the employees (R. 319 to 334).

The Board's Subsidiary Findings, upon which its Ultimate Conclusion of Company Domination is Based, are not Supported by any Substantial Evidence but *are Refuted by the Uncontradicted Evidence.*

Subsidiary findings by the Board upon which, to a large extent, it bases its "concluding findings" are:

1. That Askew and Wilkes, while not having clear supervisory powers, "occupied a strategic position to translate to the employees the desires of the respondent," and that the respondent was responsible for the activities of Wilkes and Askew in conducting a canvass for the contributions and in initiating the movement of a new Association (R. 10);

2. That the same things were true as to Weil (R. 106);

3. That it was the "manifest" wish of the Company that the old Association as it existed prior to the passage of the Act should be continued unchanged "except for concessions respecting its more obvious financial support by the respondent" (R. 109);

4. That the employees, in reorganizing the Association and in expressing their choice as to their bargaining agency, were acting under the "impact" of the Company's influence.

In *National Labor Relations Board v. Virginia Electric Power Co.* 314 U. S. 469, this Court held, in effect, that where an order of the Board is based upon subsidiary findings not supported by evidence, such order of the Board will not be enforced. It is on this principle that we urged that the erroneous and unsupported findings above enumerated vitiate that part of the Board's order to disestablish this Association.

1. *The Board's finding that the Company was responsible for the activities of Wilkes and Askew in connection with the reorganization of the Association, and the Board's assumption that the employees were led to believe that Wilkes and Askew were translating the desires of the Company are wholly without support in the evidence.*

As we have pointed out heretofore in this brief, Askew was not even permitted by the employees to have any part in the formulation of the new constitution in August and September, 1935. He attempted to inject himself into those proceedings, but his views which had previously been expressed to the effect that the old constitution and the old organization should be retained with changes merely to provide for financing it from dues, had

not met with the approval of the employees and had been definitely rejected by them. He was not permitted to name the representatives forming the small committee who outlined the framework of the new constitution although he had suggested that he be permitted to do so. This small committee was elected by the General Assembly of the old organization (R. 286). Askew had asked the members of the General Assembly to give their approval of the following procedure in making the necessary constitutional amendments "that the four general chairmen, together with the President and General Secretary, be a committee to consider and put into proper form for consideration by the General Assembly, such necessary changes in our organization as outlined herein" (R. 273). This request of Askew's was refused. The radical difference in views between Askew and the employees led to Askew's elimination as President of the then Association (R. 276).

As pointed out above, Askew had, prior to his resignation, attempted to participate in the deliberation of the committee formulating the constitution. He was twice requested to leave the room, and was not permitted to take any part in those deliberations (R. 182).

The Board concedes that neither Askew nor Wilkes had any supervisory powers, but it vaguely infers, in its findings, that in some way undisclosed by any evidence, they were in a position to "translate to the employees the desires of the respondent," and it finds that the respondent was responsible for their activities. And the Board says: "It is reasonable to assume that to such

employees they represented the Management." This assumption is without the slightest evidence to support it. The action of the committee elected by the employees to formulate a new constitution, in refusing to allow Askew to have any part in their deliberations, affirmatively shows that the employees were not influenced in any way by his views, and even if it could be assumed that Askew's views reflected in any way the wishes of the Company, it would be manifestly unfair to infer that the employees were influenced by the Company's wishes through Askew. But we repeat, there is not a scintilla of evidence that Askew was acting on behalf of the Company, or representing the Company's views or wishes.

As to Mrs. Wilkes, it is true that she was very active in the formation and adoption of the new constitution. She gave freely of her time and wrote many letters urging its adoption, but there is not the slightest evidence that any of her activities were influenced by any officer or supervisory employee of the Company. True, she was a stenographer and worked as secretary to one of the officials, but it should be borne in mind that a large percentage of the employees who are members of the Association, and who desired to be represented by it, were of the same class. Mrs. Wilkes had as much right under the Act to express her choice of a bargaining agency and to help organize and form one, as any other employee of the Company. The inference, or assumption, that some officer of the Company secretly told her what the Company wanted, or that she was, in some undisclosed way, used as a tool for the Company, is wholly unjustified. It is

respectfully submitted that the theory of the Act is that employees who are entitled to be members of, and be represented by, labor organizations, are intelligent enough and have character enough to exercise these rights. And we submit that it is unfair, in the absence of evidence and on a bare suspicion, to assume the contrary.

2. *The Board said "What is said above respecting Wilkes and Askew applies to Weil and we find the respondent responsible for his activities in the Association" (footnote R.* 106).

The uncontradicted evidence is that Weil had no supervisory powers whatever. Indeed, the Board concedes this, but the Board indulges in the same assumption, on nothing more, we submit, than bare suspicion or conjecture, as it did with respect to Mrs. Wilkes and Askew.

3. *The Board's finding that it was the "manifest" wish of the Company that the old Association should be continued unchanged "except for concessions respecting its more obvious financial support by the respondent" is without evidence to support it.*

This ruling implies that the Company had, and made known, in some way, a wish with respect to the matter referred to in this finding of the Board. Evidence is wholly lacking to support this finding. The evidence demonstrates that immediately after the passage of the Act the Company, through its Acting President, took definite and affirmative steps to make known to the officials of the Company, and to all of the employees of the Company, that it was, and would be, the policy of the Company to comply with the "letter and spirit" of the

Act. It took steps to bring to the attention of the employees the provisions of the Act. True, the Company, at that time, did not think that it was a violation of the Act, either in letter or spirit, for it to allow the employees' Association certain very minor privileges, but as soon as it became aware of the fact that even these minor privileges might be technically contrary to the Act, it withdrew them, and, from the early part of 1937, no such even minor privileges were accorded to the Association. The Board, in spite of the stipulation to the effect that the instructions given by Warren, the then Acting President of the Company, were carried out and that the information with respect to the provisions of the Act and the policy of the Company was conveyed to all of the employees, found, in effect, that the employees were, in some undisclosed manner, led to believe that the Company's policy was the very reverse of that expressed by Warren, and communicated to the employees. This, we submit, is without substantial evidence to support it and is contrary to the positive evidence.

4. *The finding of the Board to the effect that the employees, in selecting the Association as their bargaining agency, and in reaffirming their choice in the referendum of* 1941, *acted under the "impact" of the Company's influence, ignores the overwhelming weight of the evidence and its without any substantial evidence to support it.*

The positive uncontradicted evidence is that the Company never, at any time or in any manner (except possibly the action of two minor officials or supervisory employees at Shreveport, in the latter

part of 1940), sought in any way to influence the employees in any matter concerning their choice of a bargaining agency. On the contrary, the evidence is that the Company, from the very beginning after the passage of the Act, took particular pains to inform the employees of their rights under the Act and to assure them of the Company's non-interference with the exercise of those rights. When the Company learned, in the early part of 1941, that the Association intended to take the vote of the employees as to their wishes with respect to whether the Association should continue to be their bargaining agency, it posted notices, throughout the territory, clearly and emphatically informing the employees of their rights and of the Company's neutrality. In fact, the only criticism of the Board with respect to this is that the Company did not affirmatively notify the employees that it had withdrawn recognition of the Association, but merely "noted" that bargaining relations no longer existed between the Company and the Association. It is submitted that this, to say the least of it, is a very narrow view to take of the matter when the rights of the employees, under the Act, are at stake. It is believed, and we earnestly urge, that the Act should not be given any such narrow technical application.

The Board, in this connection, refers to, and relies, to a large extent on, *Western Union Telegraph Co. v. National Labor Relations Board*, 113 Fed (2) 992. In that case there were a great many facts tending to show domination, none of which exist in this case. There it was emphasized that the employer "had been consistently hostile to trade

unions"; that it had displayed an "undeviating resistance to any unionization of its employees"; that it had taken pains to make known its policy not to employ anyone who would not become a member of the Association; that it had discharged employees who had joined outside unions, and had "employed spies to learn who were such members." From all of the evidence in that case the court there held that the finding of the Board of Company domination was not without substantial support. Judge Learned Hand, in the opinion in that case, page 997, said: "We should indeed hesitate to say with the Board that the Association was an abject creature of the Company; it had had a history of controversies which seem entirely genuine, so far as the record goes, and which appear to have resulted in substantial gains. We can see no justification for putting these aside as sham battles. But it is not necessary that we should pass upon that; it is enough if the record supports a finding that the Company did so far foster or control the Association that its employees were likely on that account to prefer it to outside unions."

This Court in *National Labor Relations Board v. Link-Belt Co., supra.* held that isolated portions of the evidence should not be controlling, but that the evidence should be weighed and considered as a whole. We respectfully invoke that rule here, and we respectfully submit that considering the evidence in this record as a whole, it demonstrates that the employees, by a vast majority, have freely, and without coercion or intimidation, on several occasions, expressed their choice of this Association as their bargaining agency. And we

respectfully submit that this choice should not be ignored and swept aside because of some slight misconceptions of the meaning of the Act in its early stages, and especially where, for some three years before the rival union instigated the complaint there have been no such even minor misunderstandings, or even minor infractions by the employer, or the employees.

> *The courts have jurisdiction to determine whether the remedies applied by the Board are appropriate. The order of disestablishment, under the circumstances disclosed by the record, is not an appropriate remedy.*

This Court, in a recent decision in *Southern Steamship Co. v. National Labor Relations Board*, 316 U. S. 31, ruled, in effect, that the courts have jurisdiction over the question whether the remedy ordered by the Board is appropriate in any case.

We respectfully submit that the order of disestablishment is not, under any view of the evidence, a proper or appropriate remedy. The Association, according to all of the evidence, has been wholly free from any domination or financial support or assistance of the Company, certainly since early in 1937. In the original complaint it was charged that the Company had been guilty of unfair labor practices in the way of seeking to influence or intimidate employees at Shreveport and other places. The amended complaint confined this charge to Shreveport. There was not even a claim that there had been any such at any other place throughout the whole territory where the Company operates. The Association is not interested in whether the Company shall be dealt with concern-

ing the occurrences at Shreveport except to the extent that this may have a bearing on the order of the Board to disestablish the Association. Certainly, it would be a very harsh remedy for the Association representing the employees throughout the nine states to be disestablished because some minor official of the company, in one comparatively small exchange, overstepping his authority and committed some infraction of the Act. It is respectfully submitted that if this infraction is in any way chargeable to the Company, the remedy should be limited to dealing with the Company and appropriate measures taken to prevent any repetition of such infraction, but that the employees throughout the whole nine states should not be deprived of their rights because of this.

CONCLUSION

It has been uniformly ruled by the courts that in cases reviewing orders of the Board the evidence must be viewed and weighed in its entirety, and that when so viewed, there must be substantial evidence to support the Board's finding. A mere scintilla is not sufficient and does not constitute substantial evidence. It is submitted that the evidence in the present case, when tested by this rule, does not support the finding of the Board, or justify the order to disestablish the Association.

The evidence, without serious dispute or conflict, shows, that all financial support by the Company was terminated long before any charges were made or any complaint filed; that the employees were fully and adequately advised of their rights under the Act, and that the Company recognized

those rights and did not attempt to interfere with the employees in the exercise of those rights, or discriminate against them because of any exercise thereof; that the employees, after having been fully advised of their rights under the Act, and of the Company's attitude, reorganized the Association under an entirely new constitution; that at no time had the Company exhibited any antagonism to labor unions, either inside or outside; that there had never been any discrimination by the Company against any employee because of union activity, or any favoritism shown to any employee because of his affiliation with the Association; in short, that there had never been any of the practices tending to coerce or intimidate the employees of the Company such as have been condemned by the courts in cases upholding the Board in ordering disestablishment of so-called "inside" or "company" unions.

It is submitted that the evidence in this case demonstrates a fixed intention and determination on the part of the vast majority of the employees to exercise their rights guaranteed to them by the Act; that pursuant to this determination, they have repeatedly reaffirmed their choice of the Association as their bargaining representative.

The evidence, without conflict or dispute, shows that the employees, in the early part of 1941, overwhelmingly expressed their choice of the Association as their bargaining agency. This was done after all bargaining relations between the Association and the Company had been severed, and after the employees had been fully informed again of

their rights under the Act and of the Company's attitude of neutrality.

It is established by the undisputed evidence, and is, in effect, conceded by the Board, that the Association has functioned as an effective bargaining agency for the employees; that the bargaining processes conducted by it were real and not merely "sham battles"; and that the results obtained have been highly beneficial to the employees.

It is respectfully and earnestly urged on behalf of the employees that they should not be deprived of the right to be represented by their chosen organization because of some technical mistakes that may have been made either by them, or by the Company. The evidence as a whole shows that, regardless of any such technical mistakes, the employees, with the full understanding of their rights, and not acting under any intimidation or coercion, have repeatedly expressed their choice of the Association as their bargaining representative.

Respectfully submitted,

FRANK A. HOOPER, JR.
JAMES A. BRANCH,

Attorneys for Southern Association of Bell Telephone Employees.

Atlanta, Georgia.